

24 CV 6694-W

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court	District: Western
Name (under which you were convicted): Perry Griggs	Docket or Case No.: 1397-2010
Place of Confinement : Auburn Correctional Facility	Prisoner No.: 11B2588
Petitioner (include the name under which you were convicted) Perry Griggs	Respondent (authorized person having custody of petitioner) v. Dinapoli
The Attorney General of the State of: New York	

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Erie County Supreme Court

25 Delaware Ave.

Buffalo, NY 14202

(b) Criminal docket or case number (if you know): **1397-2010**

2. (a) Date of the judgment of conviction (if you know): **November 15, 2011**

(b) Date of sentencing:

3. Length of sentence: **20 Years**

4. In this case, were you convicted on more than one count or of more than one crime? Yes No

5. Identify all crimes of which you were convicted and sentenced in this case:

Robbery in the first degree



6. (a) What was your plea? (Check one)

<input checked="" type="checkbox"/> (1)	Not guilty	<input type="checkbox"/> (3)	Nolo contendere (no contest)
<input type="checkbox"/> (2)	Guilty	<input type="checkbox"/> (4)	Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No

9. If you did appeal, answer the following:

(a) Name of court: Appellate Division Fourth Department

(b) Docket or case number (if you know): 1397-2010

(c) Result: Affirmed

(d) Date of result (if you know): May 9, 2014

(e) Citation to the case (if you know): 117 AD3d 1523

(f) Grounds raised: Improper shackling in front of grand jury; Failure to inform grand jury about exculpatory witness; improper cross examination before the grand jury; Ineffective assistance of counsel for failing to move to dismiss based on the improprieties at the grand jury; legally insufficient evidence establishing intent and weight of the evidence.

(g) Did you seek further review by a higher state court? Yes No

If yes, answer the following:

(1) Name of court: Court of Appeals

(2) Docket or case number (if you know): 1397-2010

(3) Result: Affirmed

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(4) Date of result (if you know): June 14, 2016(5) Citation to the case (if you know): 27 NY3d 602(6) Grounds raised: Errors impaired the integrity of the grand jury proceeding and ineffective assistance of counsel; I did not receive a fair trial; Legally insufficient evidence to establish guilt

(h) Did you file a petition for certiorari in the United States Supreme Court?

 Yes No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Erie County Supreme Court(2) Docket or case number (if you know): 1397-2010

(3) Date of filing (if you know):

(4) Nature of the proceeding: 440 Motion(5) Grounds raised: Ineffective assistance for failing to investigate my psychiatric issues and to inform the court before he was relieved and before I was permitted to proceed pro-se; prosecutorial misconduct; I was not competent to waive my right to counsel.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

 Yes No

(7) Result:

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(8) Date of result (if you know):

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: **Erie County Supreme Court**

(2) Docket or case number (if you know): **1397-2010**

(3) Date of filing (if you know):

(4) Nature of the proceeding: **440 Motion**

(5) Grounds raised: **Actual Innocence**

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result:

(8) Date of result (if you know):

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

 Yes No

(7) Result:

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes No(2) Second petition: Yes No(3) Third petition: Yes No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: I was not competent to waive my right to counsel, and my lawyer was ineffective for failing to investigate

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I suffer from significant cognitive impairment and I have a limited ability to rationalize and comprehend. My waiver of counsel was not rational and I did not understand all the questions during my Faretta waiver.

(b) If you did not exhaust your state remedies on Ground One, explain why:

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(c) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue? Yes No
- (2) If you did not raise this issue in your direct appeal, explain why: I did not know about the law on this issue

(d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 440 Motion

Name and location of the court where the motion or petition was filed: Erie County Supreme Court

Docket or case number (if you know): 1397-2010

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (3) Did you receive a hearing on your motion or petition? Yes No

- (4) Did you appeal from the denial of your motion or petition? Yes No

- (5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

- (6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Appellate Division Fourth Department

Docket or case number (if you know): 1397-2010

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND TWO: Ineffective Assistance of Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Pre-Trial Counsel failed to investigate my psychiatric problems and obtain records showing my cognitive impairment; failed to challenge the improprieties at the grand jury.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why: I did not raise ineffective assistance of counsel for his failure to investigate because I did not know about the law on this issue; however, I did raise the other ineffective assistant claims.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 440 Motion

Name and location of the court where the motion or petition was filed: Erie County Supreme Court/ 25

Delaware Ave./ Buffalo, NY 14202

Docket or case number (if you know): 1397-2010

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Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? Yes No(4) Did you appeal from the denial of your motion or petition? Yes No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is "Yes," state: _____

Name and location of the court where the appeal was filed: 440 Motion/ Erie County Supreme Court

Docket or case number (if you know): 1397-2010

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two : _____

GROUND THREE: I was denied a fair trial

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The prosecutor engaged in a pattern of severe prosecutorial misconduct.

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(b) If you did not exhaust your state remedies on Ground Three, explain why:

(c) **Direct Appeal of Ground Three:**

- (1) If you appealed from the judgment of conviction, did you raise this issue? Yes No
- (2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (3) Did you receive a hearing on your motion or petition? Yes No

- (4) Did you appeal from the denial of your motion or petition? Yes No

- (5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

- (6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR: *The evidence was legally insufficient to establish my guilt of robbery*

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The people did not prove their case beyond a reasonable doubt.

- (b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

- (1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

- (2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

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Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): _____

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): _____

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:
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14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. **Western District**

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Mellisa Potzler

(b) At arraignment and plea: Same

(c) At trial: Pro-Se

(d) At sentencing: Pro-Se

(e) On appeal: Legal Aid

(f) In any post-conviction proceeding: Pro-Se

(g) On appeal from any ruling against you in a post-conviction proceeding:

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

This petition should not be dismissed as time barred. My delay in filing should be excused because I am actually innocent. I have maintained my innocence for the past fourteen years. My claim is supported by two sworn affidavits from Jasmine Greer which was reliable as they were taken under the penalty of perjury and at the behest of the State. The statements were not presented at my trial.

therefore they are new. The statements support my innocence by indicating that I did not rob the complainant as Greer stood watch as alledged by the complainant. Although Greer stated that she did not witness the entire encounter because she got out of the vehicle, her statements contradicts the complainant's and compels the conclusion that I could not have robbed Hulett even though she walked away because I did not have a gun. Greer's statements contradicts the evidence the jury heard and relied on to convict me, and as such my late claim should be excused.

The complainant stated during the grandjury and during my trial that she was present when I robbed Kim (Compare Exhibit A, B and C) Also I should not be time barred due to cause and prejudice on my competency and ineffective assistance of counsel claims

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: Immediate Release

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 11-20-24 (month, date, year).

Executed (signed) on 11-20-24 (date).



Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.